

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COBALT MULTIFAMILY INVESTORS I,
LLC et al., :

Plaintiffs, : MEMORANDUM & ORDER

-against- : 06 Civ. 6172 (KMW) (MHD)

LISA ARDEN et al., :

Defendants. :
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FILED
11/6/09

The Receiver for the plaintiffs Cobalt MultiFamily Investors I, LLC, Cobalt MultiFamily Co. I, Cobalt Capital Funding, LLC, and Vail Mountain Trust ("Cobalt entities") has filed a motion seeking entry of default judgments in varying amounts against twenty-one defendants who have failed to respond to the complaint against them. These defendants have also failed to respond to the current motion. In reviewing the complaint and motion papers, we noted a question pertaining to the legal theory under which plaintiffs pursue their claims against these defendants, specifically, whether the plaintiff companies and the receiver have standing to assert these claims, which are predicated on conduct that appears to have injured members of the public who purchased shares of the Cobalt entities. Although plaintiffs seek to recover compensation paid to the defendants for their activities, it is not obvious that those actions injured the plaintiffs, and, if not, it is unclear on what basis plaintiffs seek recovery of the compensation paid to

defendants.

Because of the foregoing uncertainty, we direct that plaintiffs serve and file a memorandum of law (and if necessary other supporting papers) by November 13, 2009 addressing the legal issue of plaintiffs' standing. Defendants may respond by November 20, 2009.

Finally, from a review of the service list included with the notice of motion, it is not entirely clear whether plaintiffs have served all of the defendants (or their counsel) against whom they now seek default judgments. Plaintiffs are to clarify this ambiguity by filing a service list that specifies that each such defendant or his/her attorney has been served and when. This is to be done by November 13, 2009.

**Dated: New York, New York
November 4, 2009**



**MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE**

Copies of the foregoing Memorandum & Order have been mailed today to:

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